IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3587 OF 2004

Bhagwan Arjun Madvi and another)..Petitioners

Versus

The State of Maharashtra and others .)..Respondents

Mr.K.S.Dewal for the Petitioners.

Mr.P.I.Khemani, A.G.P., for Respondent No.1.

Mr.R.S.Apte for Respondent Nos.2 and 3.

CORAM: H.L. GOKHALE AND
S.P. KUKDAY, JJ.

DATED: 22ND JUNE 2005

P.C.:

. Heard Mr.Dewal in support of this Petition. Mr.Khemani, A.G.P., for Respondent No.1. Mr.Apte for Respondent Nos.2 and 3.

2. The dispute in the present Petition is with respect to an amount of Rs.97,080/- demanded by Respondent Nos.2 and 3 towards the property taxes from the Petitioners and the notice dated 30th March 2004 for the recovery thereof and an attachment levied consequent thereupon. Mr.Dewal, learned Counsel for the Petitioners, has pointed out that all the bills raised from time to time have been honoured by the Petitioners. He has pointed out that prima facie there is no

justification for the bills that are raised. He has annexed copies of all the bills to the Petition and the Municipal Corporation in its reply has not disputed that there are any other bills. The Corporation has contended that there is a remedy of an appeal under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 and that should be resorted to.

3. We are quite conscious that such an appeal is to be normally resorted to. However, having considered the facts of the case, the previous Division Bench prima facie formed an opinion that there was a good case for the Petitioners. They had asked the Respondents to keep the relevant records available for the perusal of the Court. That record is not produced, but a chart is annexed to the affidavit in reply. In the facts of this case, when we find that the Petitioners have been honouring the bills over Rupees Ten lakhs or so every year, there is no reason to drive them to file the appeal for this amount. It would be better if the concerned officer of Assessment gives a hearing to the Petitioners. The relevant record of the Corporation will be kept available for the inspection of the Petitioners at the time of the hearing and thereafter it will be decided as to whether any amount is due and what is the amount due. The Respondent No.2 Corporation may complete this exercise within about eight weeks. As far as the claim

amount is concerned, Mr.Dewal submits that though he is disputing the claim, he is prepared to deposit an amount of Rs.25,000/- on account. He will deposit the amount within one week or so. In view of this statement, we do not think that the attachment needs to be continued any further. The attachment and the notice of demand will, therefore, stand quashed.

4. It will be better that the Petitioners make a representation to the concerned officer while depositing this amount of Rs.25,000/-. The Corporation will issue a notice to the Petitioners to attend before the concerned officer on a particular date and time when the Petitioners will remain present and co-operate in the determination.

5. Writ Petition disposed of in the aforesaid terms.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)